

would leave the debtor perpetually indebted to the United States.

(g) *Nonapplicability.* The provisions of this section do not apply to debts owed by Federal agencies.

(h) *Installment collections or partial payments.* When a debtor pays a debt either partially or in installments, the payments shall first be applied to administrative costs, second to penalty charges, third to accrued interest, and finally to principal. Partial payments shall be deemed to be made when received at the FEMA office designated to receive the payments. If the debtor owes more than one debt, then the ACO or the ACO's designee will apply the partial payment to the oldest debt first unless the debtor is making a voluntary installment payment. Under voluntary circumstances, the debtor may designate to which debt the payment is to be applied.

(i) *Collection of interest, penalties, and administrative charges while an appeal is pending.* If the debtor requests administrative review of the existence or the amount of the debt, interest, penalties, and administrative charges may be waived or suspended by the ACO or the ACO's designee under the following circumstances:

(1) If a State or local government requests review within the Agency of a proposed referral to the Treasury Offset Program or an administrative review of a proposed administrative offset, then the ACO or the ACO's designee may waive interest, penalty or administrative charges if the State or local government shows to the satisfaction of the ACO or the ACO's designee that its taxes and other revenues would be insufficient to allow the State or local government to provide essential public services if FEMA were to collect interest, penalty, administrative charges, or any two or more, either in whole or in part. The ACO or the ACO's designee may require that the State or local government provide FEMA with such economic, accounting, financial or demographic data as the ACO or the ACO's designee may deem necessary to reach an informed decision as to waiver.

(2) If a debtor notes an appeal or requests an administrative review that is mandated by law, then FEMA shall not

assess interest and penalties while the appeal is pending from the time that the debtor requests an administrative review or an appeal until the Agency has taken final action on the administrative review or the appeal.

(3) When a debtor notes an appeal or requests an administrative review that is permissive under statute or regulation, then interest, penalties and administrative charges may be waived if:

(i) There is no fault or lack of good faith on the part of the debtor and if the amount of interest, penalties and administrative charges is so high in relation to affordable installment repayments that the debt would never be repaid. In determining whether interest and penalties should be waived, the ACO, the ACO's designee, or the DCO may demand that the debtor provide such financial data as he or she may determine is necessary to reach an informed decision.

(ii) FEMA unreasonably delays in rendering a decision on a debtor's request for an administrative review or review within the Agency, then the ACO or the ACO's designee may waive assessment of interest, penalty, and administrative charge during the period of the unreasonable delay.

(iii) The ACO or the ACO's designee may waive or suspend the collection of interest, penalty and administrative charges, for good cause shown and if such waiver or suspension would serve FEMA's interests. The FEMA official making such a waiver shall prepare a memorandum describing the circumstances and stating the reasons for the grant of a waiver or suspension.

(j) *Accrual of interest and penalty.* Interest and penalty will accrue on delinquent FEMA debts until FEMA receives payment at the address designated by the ACO or the ACO's designee.

[63 FR 1067, Jan. 8, 1998]

#### § 11.49 Omission not a defense.

Failure to comply with any standard prescribed in 4 CFR chapter 11, or in this subpart shall not be available as a defense to any debtor.